



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RITA REYES,

Plaintiff,

vs.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

Case No. CV 09-8942 RNB

ORDER REVERSING DECISION OF  
COMMISSIONER AND REMANDING  
FOR FURTHER ADMINISTRATIVE  
PROCEEDINGS

The Court now rules as follows with respect to the three disputed issues listed in the Joint Stipulation.<sup>1</sup>

Disputed Issue Nos. 1 and 2 both relate to the finding of the Administrative Law Judge ("ALJ") that plaintiff did not suffer from a severe mental impairment

<sup>1</sup> As the Court advised the parties in its Case Management Order, the decision in this case is being made on the basis of the pleadings, the administrative record ("AR"), and the Joint Stipulation ("Jt Stip") filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g).

1 during the relevant period (i.e., the period prior to September 21, 2006). (See AR  
2 506, 537.) Specifically, in his August 7, 2009 decision, the ALJ found:

3           “The prior decision found no evidence of a severe mental  
4           impairment. No evidence has been submitted for the relevant period  
5           prior to September 21, 2006 which would rebut that finding.” (AR 506.)  
6

7           Plaintiff contends that the ALJ erred in failing to properly consider the treating  
8           psychologist and treating case manager’s “opinion” of plaintiff’s functional ability,  
9           as reflected in the letter dated November 16, 2006 (see AR 666) and/or in failing to  
10          properly consider the Pacific Clinics treatment notes. As to the November 16, 2006  
11          letter, the Court concurs with the Commissioner that the letter on its face purported  
12          to opine solely on the severity of plaintiff’s **current** symptoms and did not expressly  
13          purport to opine on the severity of plaintiff’s mental impairment during the relevant  
14          period (i.e., the period prior to September 21, 2006). However, given the proximity  
15          of the date of the letter to September 21, 2006 and the fact that it must have been  
16          generated in response to a request made earlier than November 16, 2006, it was not  
17          reasonable to infer that the opinion expressed therein to the effect that plaintiff’s  
18          mental impairment rendered her unable to maintain employment applied only to the  
19          period beginning September 21, 2006. At the very least, the letter was probative of  
20          whether, prior to September 21, 2006, plaintiff’s mental impairment(s) had more than  
21          a minimal effect on plaintiff’s mental ability to perform basic work activities. It  
22          therefore was error on the part of the ALJ to disregard plaintiff’s psychologist’s  
23          opinion without stating specific and legitimate reasons supported by substantial  
24          evidence in the record for doing so. See, e.g., Reddick v. Chater, 157 F.3d 715, 725  
25          (9th Cir. 1998) (“A treating physician’s opinion on disability, even if controverted,  
26          can be rejected only with specific and legitimate reasons supported by substantial  
27  
28

1 evidence in the record.”); Embrey v. Bowen, 849 F.2d 418, 421-22 (9th Cir. 1988).<sup>2</sup>

2 As to the Pacific Clinics treatment notes, the Commissioner is correct in  
3 asserting that the ALJ’s prior decision of September 6, 2006 reflects consideration of  
4 the Pacific Clinics treatment notes. (See AR 537.) However, the Pacific Clinics  
5 treatment notes to which the ALJ was referring in his prior decision were those  
6 provided by Pacific Clinics to the SSA on July 30, 2004. (See AR 409-20.) Thus, the  
7 ALJ’s prior non-severity finding did not include consideration of any of the 2006  
8 treatment notes that were provided in connection with the proceedings on remand.  
9 (See AR 712-37.) Those treatment notes, when considered in conjunction with the  
10 November 16, 2006 letter, also are probative of whether, prior to September 21, 2006,  
11 plaintiff’s mental impairment(s) had more than a minimal effect on plaintiff’s mental  
12 ability to perform basic work activities.

13 For the foregoing reasons, the Court concurs with plaintiff that the ALJ erred  
14 in failing to properly consider the treating psychologist and treating case manager’s  
15 “opinion” of plaintiff’s functional ability, as reflected in the November 16, 2006  
16 letter, and/or in failing to properly consider the Pacific Clinics treatment notes for  
17 2006. It follows that the Court is unable to affirm the ALJ’s Step Two finding that  
18 plaintiff did not suffer from a severe mental impairment prior to September 21, 2006.  
19 Accordingly, it is unnecessary for the Court to reach Disputed Issue No. 3.

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22 <sup>2</sup> To the extent that the Commissioner appears to be contending that the  
23 medical opinion of the consultative psychiatrist, Dr. Parikh, alone constitutes  
24 substantial evidence on which the ALJ could properly rely in support of his non-  
25 severity finding (see Jt Stip at 11-12), the Court disagrees. Dr. Parikh rendered her  
26 opinion on **March 1, 2003** (see AR 305-10), more than 3-1/2 years prior to the end  
27 of the relevant period. The Court also notes that the fact that a treating physician’s  
28 opinion is contradicted by the opinion of another physician of record is not in itself  
a sufficient reason to reject the treating physician’s opinion, but rather is merely  
determinative of the governing standard for doing so.

1 **CONCLUSION AND ORDER**

2 Remand for further proceedings is appropriate where additional proceedings  
3 could remedy defects in the Commissioner's decision. See Kail v. Heckler, 722 F.2d  
4 1496, 1497 (9th Cir. 1984). Remand for payment of benefits is appropriate where no  
5 useful purpose would be served by further administrative proceedings, Kornock v.  
6 Harris, 648 F.2d 525, 527 (9th Cir. 1980); where the record has been fully developed,  
7 Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986); or where remand would  
8 unnecessarily delay the receipt of benefits, Bilby v. Schweiker, 762 F.2d 716, 719  
9 (9th Cir. 1985).

10 This is not an instance where no useful purpose would be served by further  
11 administrative proceedings. Rather, the Court concludes that this is an instance  
12 where additional administrative proceedings still could remedy the defects in the  
13 ALJ's decision, including consideration of an earlier date than September 21, 2006  
14 for commencement of payment of Title XVI benefits.

15 Pursuant to sentence four of 42 U.S.C. § 405(g), IT THEREFORE IS  
16 ORDERED that Judgment be entered reversing the decision of the Commissioner of  
17 Social Security and remanding this matter for further administrative proceedings.

18  
19 DATED: August 19, 2010

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21  
22 ROBERT N. BLOCK  
23 UNITED STATES MAGISTRATE JUDGE  
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